

December 11, 2018

Mr. Paul Parker  
Director of the Commission's Center for Health Care Facilities Planning and Development  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, MD 21215

Dear Mr. Parker:

Thank you for the opportunity to provide input on the potential reforms of health planning and certificate of need (CON) programs. Attached is Hospice of the Chesapeake's responses to the questions posed by the Maryland Health Care Commission.

We have tried to be as thorough as possible, while being succinct and clear in our responses. If you have need of any additional information or needs points of clarification related to any of our responses, please do not hesitate to contact me directly.

Sincerely,



Ben Marcantonio  
President and CEO  
Hospice of the Chesapeake

## COMMENT GUIDANCE-GENERAL HOSPICE SERVICES MHCC CON STUDY, 2017-18

Please consider your answers in the context of Maryland's commitment to achieve the goals of the Triple Aim<sup>1</sup> and its aspiration to bring health care spending under a total cost of care model beginning in 2019. Please provide a brief explanation of the basis for your position(s) in each area of inquiry beginning with the overarching question regarding continuation of general hospice CON regulation. All responses will be part of the Maryland Health Care Commission's public record for the CON Workgroup.

### Need for CON Regulation

Which of these options best fits your view of general hospice CON regulation?

- ☐ CON regulation of general hospices should be eliminated. [If you chose this option, many of the questions listed below will be moot, given that their context is one in which CON regulation would continue to exist. However, please respond to Questions 12 and 13.]
- ☐ CON regulation of general hospice services should be reformed.
- ☒ CON regulation of general hospice services should, in general, be maintained in its current form.

### ISSUES/PROBLEMS

#### The Impact of CON Regulation on General Hospice Service Competition and Innovation

***1. In your view, would the public and the health care delivery system benefit from more competition among general hospice programs?***

Hospice of the Chesapeake does not view CON regulation as eliminating or overly restricting competition. While it limits entry into or expansion in the market, healthy competition among providers exists and promotes quality of care, development of services appropriate to those with advanced complex illness, i.e., palliative, end of life and bereavement. There is no infringement on the free market which determines the provider's survival. The competition that exists among hospice providers is adequate and sufficient to offer patients choice and would not necessarily improve services.

It is actually equally, if not more, important to consider the detrimental impact opening the market to increased competition would likely have. Competition for already limited



clinical staffing resources would have a direct and negative impact on existing programs' ability to have the critical professional resources to support quality care into the future. In addition, required components of the Medicare hospice benefit, like volunteer hours, would be compromised with more providers competing for these limited resources. Hospice providers, utilizing a greater percentage of budget resources for staff recruiting and sales and marketing with additional competition, would have fewer resources available to support those in the community needing financial assistance or charity care.

It is also important to note that the careful selection of hospice providers into the market based upon need helps ensure that patients most in need receive quality services in their same geographic area. Without the CON process, more populous areas attract providers, less populated areas are ignored.

Many of us in hospice leadership have provided hospice and palliative care services in both CON and Non-CON states. This experience does not confirm that a completely open market provides any increased benefit in terms of access to or quality of care for those needing palliative and/or end of life care.

Opening up the CON further or completely also creates the potential for those who have not developed the expertise in palliative and/or end of life care to enter the market without vetting or constraint. This not only harms existing providers who have devoted decades of resource to advancing skill and development of services to meet the needs of those living and dying with advanced complex illness, but also is a disservice to patients and families who are challenged with making difficult choices and decisions at a critical time in their life.

**2. *Does CON regulation impose substantial barriers to market entry for new general hospices or expansion of general hospice service areas? If so, what changes in CON regulation should be implemented to enhance competition that would benefit the public?***

The CON provides appropriate barriers to market entry and jurisdiction expansion. The densely populated jurisdictions have the needed competition to provide access to care. More rural jurisdictions likely could not sustain a viable business model with increased competition. In addition, these areas likely would not attract new market entrants, due to their low volume of need.

**3. *How does CON regulation stifle innovation in the delivery of general hospice services under the current Maryland regulatory scheme?***

This question makes an invalid presumption. CON regulation does **not** stifle innovation. There is no negative impact on innovation, and nothing to suggest that Maryland is less

innovative regarding end of life care than programs in Non-CON states. Hospice of the Chesapeake has been, historically and progressively, innovative in its program design and delivery of services. While existing competition is compelling and requires attention to creativity and innovation, it is our long-standing commitment to our mission that drives innovation and best practice as a provider in our field. Competition is only one driver and increasing it would be more of a distraction from than a catalyst for innovation.

**4. *Outline the benefits of CON given that hospice services do not require major capital investment, do not induce unneeded demand, are not high costs and usually do not involve advanced or emerging medical technologies.***

While hospice services do not require major capital investment, the existing reimbursement structure makes it extremely challenging to be effective stewards in a fully open market. Unfortunately there have been hospices that have practiced in such a way to induce unneeded demand; most frequently in open market, Non-CON states. And while our practice has not required advanced or emerging medical technologies, our costs related to advances in pharmacological treatments that are most effective for managing pain and other end of life symptoms continue to increase.

CON benefits hospice providers, as it does other for health care services. The benefits of CON are in managing competition to the degree that it allows hospices to be good stewards of our limited resources and providing open access to care, while competing effectively with other providers.

Also, Hospice of the Chesapeake has established excellent partnerships with other healthcare service providers. In a time when Maryland is promoting greater collaboration between hospital systems and post-acute providers, CON will support these relationships and allow us to work together, without distraction, to achieve the Triple Aim goals we have already made great strides in together.

**Scope of CON Regulation**

*Generally, Maryland Health Care Commission approval is required to establish a general hospice, increase the bed capacity (general inpatient hospice care) of a general hospice, or expand the service area of an existing general hospice into new jurisdictions. For a more detailed understanding of the scope of CON and exemption from CON review requirements, you may wish to review COMAR 10.2f 01.02 - .04, which can be accessed at:*  
[http://www.dsd.state.md.us/comar/Subtitle5search.aspx?search=10.24.01.\\*](http://www.dsd.state.md.us/comar/Subtitle5search.aspx?search=10.24.01.*)

**5. *Should the scope of CON regulation be changed?***

- A. *Are there general hospice projects that require approval by the Maryland Health Care Commission that should be deregulated?***



We are not aware of any general hospice projects that should be deregulated.

***B. Are there general hospice projects that do not require approval by the Maryland Health Care Commission that should be added to the scope of CON regulation?***

No, we are not aware of any general hospice projects that do not require approval by the MHCC that should be added to the scope of the CON regulation.

**The Project Review Process**

***6. What aspects of the project review process are most in need of reform? What are the primary choke-points in the process?***

The timeliness of the CON process is the aspect most in need of reform. We would also support an opportunity to revisit the formula for establishing need—there may be other states' models that could help us establish a better formula given our current needs and goals in Maryland.

***7. Should the ability of competing general hospice programs or other types of providers to formally oppose and appeal decisions on projects be more limited?***

***Are there existing categories of exemption review (see COMAR 10.24.01.04) that should be eliminated? Should further consolidation of health care facilities<sup>2</sup> be encouraged by maintaining exemption review for merged asset systems?***

A formal process to oppose and appeal is needed and should not be limited. Interested parties should have a venue and a platform to challenge and discuss competing hospice CON filings.

Existing guidelines seem appropriate and adequate for guiding the process of those systems that want to pursue merger.

***8. Are project completion timelines, i.e., performance requirements for implementing and completing projects, realistic and appropriate? (See COMAR 10.24.01.12.)***

Yes. The MHCC has demonstrated flexibility when needed.

## The State Health Plan for Facilities and Services

9. ***In general, do State Health Plan regulations for general hospice services provide adequate and appropriate guidance for the Commission's decision-making? What are the chief strengths of these regulations and what do you perceive to be the chief weaknesses?***

We find the framework for the CON in the State Health Plan (SHP) to be adequate and appropriate. We do believe, however, as noted above that the current need determination could be updated and simplified.

In the most recent hospice CON application process, there has been unclear and conflicting information as to the number of providers that would be approved. It would seem that the SHP should identify the projected number of providers needed before or early on in the process.

10. ***Do State Health Plan regulations focus attention on the most important aspects of general hospice projects? Please provide specific recommendations if you believe that the regulations miss the mark.***

Key performance indicators (KPI's) related to Hospice and the State Health Plan should be considered along with additional quality indicators captured in Hospice Compare and in PEPPER reports.

Hospices' ability to identify patients' needs for palliative care and intervention at the right time, for the right level of care, in the right setting is a critical component of the healthcare continuum and helps achieve the State's goals for population health.

Timely provision of palliative care (>6 months prognosis) and hospice services (<6 months prognosis) allows the interdisciplinary team (IDG) time to work with the patient and family in ways that help reduce hospitalizations, and avoid unnecessary and costly interventions. Goals of care conversations initiated in the earlier stages of advanced complex illness lay the groundwork for the more challenging conversations related to choosing the hospice benefit in a timely manner. Earlier referrals would lead to greater hospice impact on the total cost of care model and provide enhanced end of life experiences in Maryland. Hospice providers seeking to establish services in a new market should have to demonstrate the ability and expertise in this regard.

11. ***Are the typical ways in which MHCC obtains and uses industry and public input in State Health Plan development adequate and appropriate? If you believe that changes should be made in the development process for State Health Plan regulations, please provide specific recommendations.***

Regulation changes should be focused on need determination and Hospice Provider impact on the total cost of care model.



### **General Review Criteria for all Project Reviews**

COMAR 10.24.01.08G(3)(b)-(f)) contains five general criteria for review of all CON projects, in addition to the specific standards established in the State Health Plan: (1) Need; (2) Availability of More Cost-Effective Alternatives; (3) Viability; (4) Impact; and (5) the Applicant's Compliance with Terms and Conditions of Previously Awarded Certificates of Need.

**12. Are these general criteria adequate and appropriate? Should other criteria be used? Should any of these criteria be eliminated or modified in some way?**

We believe that new applicants for CON need to be required to demonstrate and explain how they, as a new provider, would be able to establish timely and effective partnerships needed to achieve the State's goals for Global Budget Revenue and value based purchasing.

They also should be able to address the provision of charitable care. While already required data in a CON application submission, should be deemed an important element in the CON evaluation process.

### **CHANGES/SOLUTIONS**

#### **Alternatives to CON Regulation**

**13. If you believe that CON regulation of general hospices should be eliminated, what, if any, regulatory framework should govern establishment and service area expansion of home health agencies?**

Not applicable

**14. Are there important benefits served by CON regulation that could be fully or adequately met with alternative regulatory mechanisms? For example, could expansion of the scope and specificity of general hospice licensure requirements administered by the Maryland Department of Health serve as an alternative approach to assuring that these services are well-utilized and provide an acceptable level of care quality, with appropriate sanctions to address under-utilization or poor quality of care?**

The Department of Health and Human Services (DHHS) should not be involved in the CON process. The DHHS serves a different purpose. It ensures existing providers meet the minimum regulatory requirements for the provision of services. The CON process is, and should remain, a benchmark for entry into the market, not for continuation in the market.

## **The Impact of CON Regulation on General Hospice Program Competition and Innovation**

15. *Do you recommend changes in CON regulation to increase innovation in service delivery by existing general hospice programs and new market entrants? If so, please provide detailed recommendations.*

CON regulation does not stifle innovation. Hospice providers will continue to innovate within the existing Medicare Benefit.

16. *Should Maryland shift its regulatory focus to regulation of the consolidation of general hospice programs to preserve and strengthen competition for home health agency services?*

We do not believe Maryland should shift its regulatory focus to regulation of the consolidation of general hospice programs to preserve competition for home health services. The two services respond to different factors, treat different patients, and are paid under a different regulatory scheme.

## **The Impact of CON Regulation on General Hospice Access to Care and Quality**

At what stage (prior to docketing or during project review) should MHCC take into consideration an applicant's quality of care performance? How should applicants be evaluated if they are new applicants to Maryland or to the industry?

*Note: docketing is the determination by the MHCC when an application is judged complete and ready for review.*

MHCC should use actual complaint and survey data of the existing providers. *New applicants should be evaluated on like data from state or states in which they operate.*

*Applicants or **corporate affiliated entities** with active DOJ investigations related to potential fraudulent practice should be disqualified.*

Applicants should be evaluated with industry benchmarking standards such as Hospice Compare and the PEPPER report, which are indicators of quality, satisfaction and regulatory adherence.

## **Scope of CON Regulation**

17. *Should MHCC be given more flexibility in choosing which general hospice projects require approval and those that can go forward without approval, based on adopted regulations for making these decisions? For example, all projects of a certain type could require notice to the Commission that includes information related to each project's impact on spending, on the pattern of*



*service delivery, and that is based on the proposals received in a given time period. The Commission could consider staff's recommendation not to require CON approval or, based on significant project impact, to require the general hospice project to undergo CON review.*

No.

**18. *Should a whole new process of expedited review for certain projects be created? If so, what should be the attributes of the process?***

No.

### **The Project Review Process**

**19. *Are there specific steps that can be eliminated?***

No specific steps to be eliminated other than any noted above that help to streamline and improve on timeliness of the process.

**20. *Should post-CON approval processes be changed to accommodate easier project modifications?***

Post Con process is reasonable and adequate and the Commission has shown flexibility in working with providers on reasonable project modifications.

**21. *Should the regulatory process be overhauled to permit more types of projects to undergo a more abbreviated form of review? If so, please identify the exemptions and describe alternative approaches that could be considered.***

No.

**22. *Would greater use of technology, including the submission of automated and form-based applications, improve the application submission process?***

Yes.

### **Duplication of Responsibilities by MHCC and MOH**

**23. *Are there areas of regulatory duplication in general hospice regulation that can be streamlined between MHCC and MDH?***

Not at this time, the departments serve different functions

Thank you for your responses.